IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 616 of 1999
in
SPECIAL CIVIL APPLICATION NO 2017 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DESAI ISHWARBHAI SANKABHAI

Versus

RANUJ KELVANI MANDAL

Appearance:
1. LETTERS PATENT APPEAL No. 616 of 1999
NANAVATI & NANAVATI for Appellant No.
MR BD KARIA for Respondent No. 1
MR NC SHAH for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2-4
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. This Letters Patent Appeal is directed against the order dated 23.3.1999 passed by the learned Single Judge of this Court in Special Civil Application No.2017 of 1999 whereby the learned Single Judge of this Court dismissed the petition in limine at the admission stage.

2. The Appellant-petitioner was appointed as Craft Teacher in Adhyapan Mandir, run by the respondent No.1 Trust on 22.1.1992, on probation for a period of 2 years. It seems that on the Audit objection raised by the Audit Department about the minimum qualification of the appellant - petitioner his services were terminated, therefore, on earlier occasion the appellant - petitioner filed Special Civil Application No.8045 of 1996 before the learned Single Judge of this Court wherein Rule was issued and the order of dismissing the service of the petitioner was stayed by the learned Single Judge of this Court. That petition is still pending and ordered to be heard along with this Letters Patent Appeal. During the pendency and final disposal of that writ petition i.e. Special Civil Application No.8045 of 1996, inspite of the interim order passed by this Court the services of the petitioner were once again terminated by the impugned order dated 5.5.1998.

3. Aggrieved of the impugned order of dismissal from service dated 5.5.1998 passed by the management, the appellant petitioner had approached this Court by way of writ petition i.e. Special Civil Application No.3977 of 1998. The said writ petition was dismissed by the learned Single Judge of this Court as the learned Single Judge was of the opinion that there was no merit in the said writ petition and the notice which was ordered to be issued in that petition was discharged. However, while dismissing the writ petition, in the operative part of the order, the learned Single Judge of this Court has recorded the statement of the learned Counsel for the appellant - petitioner that in certain cases on account of Audit Report appointment of employees were found to be illegal, but the State Government, after considering those cases, regularized the appointment of such employees, therefore, he intended to approach the State Government by way of proper representation. In view of the statement made by the learned Counsel for the petitioner at the Bar the learned Single Judge of this Court allowed the petitioner to make representation to the State Government and continued the interim relief

granted earlier for a period of 2 weeks while dismissing the Special Civil Application No.3977 of 1998.

4. In pursuance of the aforesaid order dated 10.7.1998, passed by the learned Single Judge of this Court in Special Civil Application No.3977 of 1998, the appellant-petitioner submitted the representation dated 27.7.1998 (Anenxure : K to the petition) to the State Government wherein all sorts of other contentions were raised, but the main contention regarding the State Government regularizing the services of other similarly situated employees was not raised. The State Government by its order dated 30.1.1999 rejected his representation. It was challenged by the appellant-petitioner by way of another writ petition i.e. Special Civil Application No.2017 of 1999, which was dismissed by the learned Single Judge of this Court on 23.3.1999. Hence, this Letters Patent Appeal.

5. It was specifically contended before the learned Single Judge by the appellant - petitioner that employees like (i) Shri Dineshbhai Desai serving in Sevalia Uttar Buniyadi Vidyalaya, and (ii) Shri Rameshbhai Desai, serving at Dantali Uttar Buniyadi Vidyalaya having similar qualifications are continued in service, but the petitioner's services have been terminated. Therefore, the impugned order of termination of service of the appellant-petitioner should be declared as bad in law. It appears to us that another contention was also raised before the learned Single Judge that the State Government ought not to have rejected the representation of the petitioner when the aforesaid 2 employees, having same qualification, their services were regularized by the State Government. Therefore, the order passed by the State Government on 30.1.1999 rejecting the representation of the appellant - petitioner be declared illegal. However, the said contention of the petitioner was rejected by the learned Single Judge as in the representation the petitioner had not claimed any parity with those 2 aforesaid employees. In that view of the matter the learned single Judge was of the opinion that the Government, before passing the impugned order dated 30.1.1999, rejecting the representation of the petitioner, had no occasion to examine those cases which were cited by the appellant - petitioner in a petition before this Court. The learned Single Judge has also observed that though the petitioner had sought leave of this Court on earlier occasion i.e. on 10.7.1998 in Special Civil Application No.3977 of 1998 to approach the Government for regularization of his services in view of the treatment given to those aforesaid 2 persons no such

contention was raised by the petitioner in his representation dated 27.7.1998 made before the State Government. In that view of the matter the learned Single Judge dismissed the writ petition by order dated 23.3.1999.

6. In view of the aforesaid no fault can be found with the order passed by the learned Single Judge dismissing the writ petition of the appellant petitioner by an order dated 23.3.1999. However, the learned Counsel for the appellant submitted that inadvertently the appellant - petitioner could not take the contention regarding the treatment meted out to other employees in his representation dated 27.7.1998 though the learned Single Judge of this Court granted specific permission by his order dated 10.7.1998 passed in Special Civil Application No.3977 of 1998, therefore, he may be allowed to make representation on that point.

7. In ordinary circumstances such request would have been straightway rejected, but considering the peculiar facts and circumstances of the case, we are of the considered opinion that when the learned Single Judge of this Court on earlier occasion i.e. on 10.7.1998 had given permission in Special Civil Application No.3977 of 1998 to the petitioner to make representation on that point and that in the present writ petition i.e. Special Civil Application No.2017 of 1999 also this contention was specifically raised, therefore, we grant permission to the appellant-petitioner to make fresh representation on this point only to the State Government. If such representation is made within one week from the date of receipt of copy of this order by the appellant petitioner to the State Government, then the State Government shall consider and decide the same in accordance with law as early as possible and preferably within 3 months from the date of receipt of such representation.

With these observation, this Letters Patent Appeal is dismissed. No order as to costs.

sd/-

(B.J.Shethna, J.)

Date : April 16, 2003 sd/-

(A. L. Dave, J.)

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